

# Notice of Allowability

Application No.

09/536,551

Examiner

Lauren Q Wells

Applicant(s)

MORRE ET AL.

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed 2/2/04.
2. ☒ The allowed claim(s) is/are 12-24 (renumbered as 1-13).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

Claims 12-24 are pending. The Appeal Brief filed 2/2/04, has been received.

#### ***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Chris Tsang on 6/9/04.

The application has been amended as follows:

1) In claim 12,

-in line 1, delete the term "for" and insert the term "of".

-part (b), delete the term "compound" and insert the term "agent".

2) In claim 17, replace the period with a comma and insert the phrase (following the comma), "whereas the absence of reduced cytochrome c in the mixture comprising the test agent indicates that the test agent sequesters AR-NOX.".

3) In claim 20, replace the period with a comma, and insert the phrase (following the comma), "whereas the absence of reduced substrate in the mixture comprising the test agent indicates that the test agent sequesters AR-NOX.".

4) In claim 24, replace the period with a comma, and insert the phrase (following the comma), "whereas the absence of disulfide-thiol interchange in the substrate in the mixture comprising the test agent indicates that the test agent sequesters AR-NOX.".

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***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance:

Claims 12-24 are allowable over the prior art, as the prior art neither anticipates nor renders obvious the instant methods of screening for agents that sequester AR-NOX. The closest prior art is BioFactors, 1999, 9:179-187. However, a 131 Declaration filed 3/14/02, established that BioFactors is not prior art, as it is not "by another".

Applicant's arguments toward the 35 USC 112, 1<sup>st</sup> paragraph, rejection are persuasive to overcome this rejection in the previous Office Action. See the Appeal Brief filed 2/2/04, for these arguments. It is further pointed out that the specification does teach test agents and that in the screening assay art, test agents are well known. Furthermore, AR-NOX is an isoform of NADH oxidase, wherein agents that react with NADH oxidase are well known. Thus, the instant claims are enabled.

The above Examiner's amendment clarifies the instant claims by reciting the link between detection and indication of a test agent that sequesters AR-NOX.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

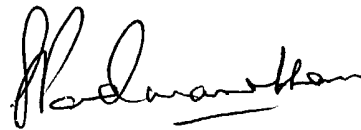
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**